

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 19-CR-0074(ERK)
:
:
-against- : United States Courthouse
: Brooklyn, New York
:
:
STEPHEN COTOGNO, : Monday, June 1, 2020
: 10:00 a.m.
:
Defendant. :
:
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TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE ERIC R. KOMITEE
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: RICHARD P. DONOGHUE, ESQ.
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
BY: JAMES P. McDONALD, ESQ.
GENNY NGAI, ESQ.
Assistant United States Attorneys

For the Defendant: LaRUSSO CONWAY & BARTLING, LLP
300 Old Country Road
Suite 341
Mineola, New York 11501
BY: ROBERT P. LaRUSSO, ESQ.

Court Reporter: Stacy A. Mace, RMR, CRR, RPR, CCR
Official Court Reporter
E-mail: SMaceRPR@gmail.com

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2

1 (In open court.)

2 (All participants via video and teleconference.)

3 (Judge ERIC R. KOMITEE presiding.)

4 THE COURTROOM DEPUTY: Criminal cause for
5 sentencing, Docket Number 19-CR-274, United States of America
6 versus Stephen Cotogno.

7 Would you all please state your appearances for the
8 record, starting with the Government?

9 MR. McDONALD: Good morning, Your Honor.

10 Good morning, everyone. It's James McDonald on
11 behalf of the United States.

12 THE COURT: Good morning.

13 MS. NGAI: Good morning, Your Honor. I'm also
14 joining for the Government, and this is Genny Ngai.

15 THE COURT: Good morning.

16 MR. LaRUSSO: And Robert La Russo representing
17 Mr. Cotogno.

18 Good morning, Your Honor. Good morning, everybody.

19 THE COURT: Good morning, Mr. LaRusso.

20 USPO DENIZ: And good morning, Your Honor, Angelica
21 Deniz with United States Probation.

22 THE COURT: Good morning. Good to have you on.

23 THE COURTROOM DEPUTY: That's it, Judge.

24 THE COURT: All right, thank you.

25 So, we're here today for a sentencing as everyone

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3

1 knows.

2 First off, can I just make sure I understand how to
3 pronounce the defendant's name? And it sounds like people are
4 mostly saying Mr. *KUH-TOG-NOE*.

5 THE DEFENDANT: That's correct, Judge.

6 THE COURT: Okay.

7 I am very sympathetic, as somebody whose last name
8 is mispronounced much more frequently than it's pronounced
9 correctly.

10 THE DEFENDANT: Actually, you did it perfect.

11 THE COURT: Okay, good.

12 So, these are, obviously, not ideal circumstances in
13 which to be going forward for sentencing, but we are living in
14 less than perfect times right now and this may be the best
15 option that we have under the circumstances.

16 I want to start out by saying, so I have a series of
17 screens in front of me and I also have a printed out outline
18 for sentencing, just to make sure I cover every matter that we
19 need to cover on the record.

20 For everybody on the call, but, Mr. Cotogno, for you
21 in particular, if you see me looking off what seems to my
22 left, I am not checking on news or the Internet or anything,
23 I'm looking at various records --

24 THE DEFENDANT: Okay.

25 THE COURT: -- that I have in front of me.

Proceedings - Via Videoconference

4

1 The first thing we need to do is just acknowledge
2 that we are moving forward by videoconference at Mr. Cotogno's
3 request and with his consent. That is not something that has
4 always been allowed under the Rules of Criminal Procedure,
5 namely to have sentencing proceedings by video, and there are
6 certain findings that I need to make before we go forward this
7 way.

8 In plain English, Mr. Cotogno, I just want to start
9 out by saying that if you wanted to delay this sentencing
10 proceeding until it was deemed safe for you to travel and for
11 us to gather in court, we would accommodate that request, but
12 I understand that you wish to go forward today by video
13 instead of waiting to move forward in person.

14 Is that correct?

15 THE DEFENDANT: Yes, that's correct, Your Honor.

16 THE COURT: Okay. So as I mentioned, I need to make
17 certain findings on the record to move forward that way.

18 First, do you understand you have the right to be
19 physically present in open court for sentencing?

20 THE DEFENDANT: Yes, I understand.

21 THE COURT: And you understand that you have the
22 right to consult with your lawyer during the sentencing, so if
23 we were in court together we would go off the record for a
24 period, you and your attorney would find a place in the
25 hallway or in a conference room where you could confer with

Proceedings - Via Videoconference

5

1 each other, but out of earshot of the Court or the Government
2 or the Probation Department or anybody else. We can make that
3 happen in this virtual environment as well. If there is any
4 point at which you need to confer with your lawyer because you
5 don't understand what's going on or because you have questions
6 or anything you want to consult with your lawyer about, we can
7 arrange that by what I guess people are calling a virtual
8 breakout room, where you and Mr. LaRusso could speak to one
9 another, but nobody else would be party to that, that
10 particular conversation.

11 Do you understand that?

12 THE DEFENDANT: Yes, I understand.

13 THE COURT: Okay.

14 Have you consulted with your attorney regarding the
15 waiver of your right to appear here in person?

16 THE DEFENDANT: Yes, I have.

17 THE COURT: Okay. And you understand that your
18 family members and other supporters also have the right to
19 attend this proceeding?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay.

22 Do you agree to waive your right to appear in person
23 for sentencing and instead appear by video?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: Okay.

Proceedings - Via Videoconference

6

1 Your lawyer and also the lawyer for the Government
2 have indicated that the reason, or at least part of the
3 reason, you want to proceed expeditiously here by video is
4 because of your age and certain medical conditions. And
5 specifically, your lawyer has indicated that you would have
6 extreme difficulty in traveling to the Eastern District of
7 New York for in-person sentencing, both because of your
8 medical conditions and because of the COVID-19 pandemic.

9 Is that a fair statement of why you want to move
10 forward by video here today?

11 THE DEFENDANT: It's actual statement, yes, it's --
12 it's true.

13 THE COURT: Okay, thank you.

14 All right. So, based on that conversation I now
15 make the following findings:

16 I find that the Judicial Conference has determined
17 that the COVID-19 emergency is materially affecting the
18 functioning of the federal courts. These are findings that
19 are required by the new statute that allowed us to proceed by
20 video. I find that Chief Judge Mauskopf, the chief judge of
21 the Eastern District of New York, has issued an order dated
22 March 30th of 2020 finding that felony sentencing under
23 Rule 32 of the Federal Rules of Civil Procedure cannot be
24 conducted in person without seriously jeopardizing public
25 health and safety.

SAM

OCR

RMR

CRR

RPR

1 Because Mr. Cotogno is seeking a sentence of
2 probation and because of his advanced age, or at least a
3 non-custodial sentence I should say, and because of his
4 advanced age and ongoing medical conditions, I now find that
5 further delay of this proceeding would create the risk of
6 serious harm to the interests of justice, and I cite
7 Administrative Order Number 2021-13 at paragraph 2. That is
8 the order from the Chief Judge that I mentioned a few moments
9 ago.

10 I further find that Mr. Cotogno has knowingly and
11 voluntarily waived his right to appear physically in court and
12 has agreed knowingly and voluntarily to proceed by
13 videoconference.

14 I find that the measures taken to provide public
15 access to this proceeding are reasonable under the
16 circumstances, and that to the extent the defendant's right to
17 public access is in any way impaired, Mr. Cotogno has
18 knowingly and voluntarily waived that right.

19 Let me start off by describing for the record the
20 arrangements that we have set up for this proceeding.

21 On your screen you should be able to see me, my
22 courtroom deputy, Ms. Guy, the lawyers, both your lawyer and
23 the lawyers for the Government. You will not see the
24 probation officer, but you should be able to hear her.

25 Is it accurate to say that you can see and hear, as

Proceedings - Via Videoconference

8

1 relevant, those people?

2 THE DEFENDANT: I cannot.

3 THE COURT: Cannot?

4 THE DEFENDANT: I cannot.

5 THE COURT: You can't see anybody?

6 THE DEFENDANT: I see four -- six people.

7 THE COURT: Okay, so you see your lawyer?

8 THE DEFENDANT: I see my lawyer.

9 THE COURT: Do you see me?

10 THE DEFENDANT: If I knew what you looked like. I

11 see --

12 THE COURT: I am wearing a blue blazer and a white

13 V-shirt with no tie.

14 Do you see me or no?

15 THE DEFENDANT: No, I don't. I see a white
16 shirt and a medical blazer, and then I see, I think it's James
17 McDonald, I'm not sure.

18 THE COURT: Mr. McDonald is wearing a blue suit and
19 a white shirt with a blue tie.

20 THE DEFENDANT: I see him.

21 THE COURT: I am now waving my hands.

22 THE DEFENDANT: I don't see you.

23 THE COURT: Okay. All right, so we are, obviously,
24 proceeding under less than perfect circumstances here, and I
25 think the question for both Mr. LaRusso and for Mr. Cotogno is

Proceedings - Via Videoconference

9

1 given the technical difficulties that we have had so far,
2 given the defendants, obviously, have a right to see the judge
3 at sentencing. I can see Mr. Cotogno, which is important to
4 me, but I understand the situation is not working in reverse.

5 The question, Mr. LaRusso, to you and your client
6 is, do you want to proceed under these circumstances and do
7 you believe that for all the reasons I said before that it is
8 important to do so, even given some of the technical issues we
9 are having, rather than wait to proceed in person?

10 MR. LaRUSSO: Your Honor, my opinion right now and
11 my advice to my client would be that under the circumstances I
12 think we should go forward. I think the Court has all the
13 information necessary and as the Court indicated, you are able
14 to see my client. I don't know how important it is to my
15 client to see you. I can say that you have a nice beard, Your
16 Honor.

17 THE COURT: Thank you.

18 MR. LaRUSSO: I've wanted to grow one, so I'm
19 jealous, I'll be honest with you.

20 THE COURT: I have been working on it during
21 quarantine, so...

22 MR. LaRUSSO: But I'll leave it up to him, Judge, if
23 there is a personal opinion that he feels it's necessary to be
24 able to see you, I would advise that we go forward.

25 THE DEFENDANT: I have no problem with that, Bob.

Proceedings - Via Videoconference

10

1 For me to make that trip, I don't even know if I could do it,
2 I'll be honest with you.

3 MR. LaRUSSO: Your Honor, just to bring you up to
4 date: I spoke with Mr. Cotogno last night, and though his
5 face doesn't really reflect it, he has been in constant pain
6 primarily because of his back, and he indicated to me he
7 really would like to move forward to be able to take care of
8 his ailments and his age and to be able to spend time with his
9 family.

10 So I think his decision to go forward is based upon
11 solid -- a solid foundation, Your Honor.

12 THE COURT: Okay.

13 Do you agree with that, Mr. Cotogno?

14 THE DEFENDANT: Yes. Yes, I do.

15 THE COURT: Okay.

16 All right, then under the circumstances and for the
17 reasons I have already said on the record, I am in agreement
18 that the interest of justice would be served, best served by
19 proceeding by video at this point rather than waiting, but I
20 will just reiterate, Mr. LaRusso and Mr. Cotogno, if at any
21 point you feel like your ability to participate fully and
22 effectively here is suffering because of the technical issues,
23 just flag the moment for us and we will seek to address that
24 in whatever the best way we can is under the circumstances.

25 THE DEFENDANT: Thank you.

Proceedings - Via Videoconference

11

1 THE COURT: Does that make sense?

2 THE DEFENDANT: Yes, that works for me.

3 THE COURT: Okay.

4 So before we begin, Mr. Cotogno, I want to start by
5 explaining to you the overall process for this morning,
6 essentially just giving an outline of what the various topic
7 areas that we are going to cover is.

8 So, first what I'll do is I am going to list on the
9 record every submission that I have received and considered
10 for sentencing. And the purpose for that is simply to make
11 sure that we are all looking at the same documents, that the
12 parties can be assured that I have received everything the
13 parties think I should have received, and that you all have
14 received everything, so that we are all working off the same
15 information.

16 Second, we will discuss the Probation Department's
17 pre-sentence report. I understand there are some, I don't
18 know if formal objections is the right word, but that your
19 sentencing submission, Mr. LaRusso, takes issue with some of
20 the factual recitations in the PSR, and we will resolve those
21 today.

22 Next, under federal sentencing law I have to
23 determine what the guidelines range is, the range of
24 incarceration and other factors under the Advisory Sentencing
25 Guidelines system.

1 The Guidelines, as I mentioned, are advisory. They
2 are not binding on this court, but nevertheless, the Court
3 must still determine what the guidelines range is. And I must
4 consider the Advisory Guidelines, as well as any departures
5 that might apply in a given case, even though I don't believe
6 there are any pending motions for upward or downward
7 departures before the Court today.

8 I also have to consider what we call the Section
9 3553(a) factors. Those are the factors set out in the statute
10 in Title 18 of the U.S. Code. Congress has required that we
11 consider certain factors outside of the Advisory Guidelines
12 system that relate to the nature of the offense and your
13 history and other factors.

14 After I consider all of this, I will give the
15 attorneys an opportunity to address the Court and to make any
16 arguments that they wish to make, understanding that I have
17 already carefully reviewed their written submissions with
18 respect to sentencing.

19 Final, Mr. Cotogno, you also have the right
20 yourself, but not the obligation, to make a statement to the
21 Court if you choose before I impose sentence. I know that you
22 submitted a letter to the Court, which I have read carefully,
23 I have read all of the letters that have been submitted, but,
24 nevertheless, if you wish to make an additional statement
25 today, I will be happy to give you that opportunity.

Proceedings - Via Videoconference

13

1 THE DEFENDANT: Thank you, Your Honor.

2 THE COURT: Once all of this has happened, I will
3 impose sentence.

4 Do you understand the process?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you have any questions at this stage?

7 THE DEFENDANT: No.

8 THE COURT: Okay.

9 So, I will note that Mr. Cotogno's guilty plea was
10 before Magistrate Judge Scanlon, that he pleaded to the sole
11 count of the Information, and that that Information charged
12 him with knowingly and willfully making one or more materially
13 false, fictitious and fraudulent statements and
14 representations, and that this was charged as a violation of
15 Title 18 U.S. Code Section 1001(a)(2).

16 I have received the following documents in
17 preparation for this sentencing hearing:

18 The pre-sentence report dated December 20th of 2019.
19 I have a confidential recommendation from the Probation
20 Department regarding the sentence that the Probation
21 Department recommends be imposed, restitution, fine, other
22 factors.

23 I have the Government's sentencing memorandum dated
24 May 18th, 2020.

25 I have the defendant's sentencing memorandum dated

1 May 18th, 2020.

2 I have a series of letters in support of the
3 defendant. Letters from a number of family members, including
4 the defendant's daughter, Jillian DeFazio, dated May 4th,
5 2020; a letter from his son, Stephen Cotogno, dated May 5th,
6 2020; a letter from his brother Joseph, also dated May 5th,
7 2020; and several letters from friends, including Patrick
8 DeRespinis, dated October 9th; Kenneth Lee, dated October 8th,
9 2019; Felix Schirripa, dated October 8th, 2019; Marcos Chang,
10 dated October 14th, 2019; a letter from the defendant's
11 physician confirming his physical condition, and a letter from
12 Dr. Kristopher Tardio, dated July -- that is the letter from
13 the physician, dated July 9th 2018. And I don't know if
14 "physician" is the right word there, that may be a different
15 type of practitioner, but I have read that letter carefully.

16 I also have the Government's letter regarding
17 restitution and victim identities in this case that was just
18 submitted on Friday of this past week in response to the order
19 that I put on the docket on Friday.

20 Mr. LaRusso, I just want to make sure that you saw
21 the Government's most recent submission, given how recently it
22 was submitted.

23 MR. LaRUSSO: Your Honor, I saw it before it was
24 filed and I read it after it was filed, and I provided a copy
25 to my client. I'm not sure what day I provided it, but it was

Proceedings - Via Videoconference

15

1 shortly after it was filed.

2 THE COURT: Okay.

3 Mr. Cotogno, that was because I had some questions
4 about -- I understood you have an agreement on restitution
5 with the Government as far as the amount of restitution that
6 will be paid, but I didn't understand, getting ready for
7 today's proceedings, who that restitution was going to be paid
8 to and how it would be paid to them. And so I asked for a
9 further follow-up from the Government, which they provided
10 expeditiously, and I understand that your lawyer was in that
11 loop as well.

12 THE DEFENDANT: He provided it to me.

13 THE COURT: Thank you.

14 Is there anything else that I should have,
15 Mr. McDonald?

16 MR. McDONALD: No, nothing comes to mind, Your
17 Honor.

18 THE COURT: Okay.

19 Anything else, Mr. LaRusso, that I should have?

20 MR. LaRUSSO: No, Your Honor, not that I can think
21 of.

22 THE COURT: Okay. And, Mr. LaRusso, have you and
23 your client read and discussed the pre-sentence report?

24 MR. LaRUSSO: We have thoroughly, Your Honor.

25 THE COURT: Okay.

1 Before proceeding further, I just want to briefly
2 come back to this question of what we are sealing on the
3 record here. We had some back-and-forth about what would be
4 sealed. Mr. Cotogno, you have now asked to seal your medical
5 records in their entirety, which I understand. There was also
6 some back-and-forth about the question of whether we would
7 redact on the record the name of an alleged co-conspirator who
8 has not yet been indicted.

9 As to the proposed redactions that the defense has
10 made to date, I find that all of those proposed redactions of
11 the exhibits are narrowly tailored to legitimate privacy
12 interests, both the defendant's medical conditions and also
13 the interest of the alleged unindicted co-conspirator.

14 But there are, I think, some additional references
15 to that alleged unindicted co-conspirator's name, and I just
16 want to ask both parties whether they have a position on
17 whether we should be making further redactions to make sure
18 that that person's name is redacted everywhere it appears?

19 Mr. McDonald, does the Government have a view on
20 that?

21 MR. McDONALD: I don't have. I don't have a view on
22 that. It's Mr. LaRusso's application. I don't have any
23 objection to it, but I am not able to make my own application
24 for it.

25 THE COURT: Okay.

1 MR. LaRUSSO: Your Honor, if I could.

2 I'm very sensitive, having been an assistant, to
3 disclosing in public records the name of confidential
4 informants. What I did in the redaction was leave Mr. -- the
5 cooperator's name in the file document, but in no way
6 discloses him to be an informant. I took out the footnote,
7 which would have probably identified him as such. So upon
8 reading the redacted indictment, you wouldn't in any way draw
9 the inference that he was a cooperator. That's why I just
10 removed the footnote, to prevent that inference from being
11 drawn.

12 THE COURT: Okay.

13 All right, so based on that colloquy, I now find
14 that the proposed redactions are narrowly tailored to
15 legitimate privacy interests and I order those redactions
16 made.

17 Is either party seeking an evidentiary hearing today
18 on any issue? I take it the answer is no.

19 MR. McDONALD: The Government is not seeking a
20 hearing, Your Honor.

21 MR. LaRUSSO: No, Your Honor. We neither are
22 seeking it at all.

23 I know you referenced earlier in our sentencing
24 submission we had commented upon some of the factual aspects
25 of the pre-sentence report. We are not taking exception to

1 those facts, we just are seeking clarification for the Court's
2 understanding of my client's role in the underlying offense.

3 It was just by way of clarification, expansion of
4 the facts, explanation, it was no exception taken to the
5 presentation warranting a hearing.

6 THE COURT: Okay, and we will get into the specific
7 facts alleged in the PSR that the defendants may have a
8 different view about, but let me now turn to the calculation
9 of the advisory guidelines range.

10 So, according to the pre-sentence report, the
11 Probation Department calculates the total offense level as 4,
12 which is based on the calculation that is reflected in
13 paragraphs 14 through 23 of the PSR. And the way they get
14 there is that the guideline for Section 1001 offenses, the
15 applicable guideline is U.S. Sentencing Guidelines Section
16 2B1.1, which provides for a base offense level of 6, and then
17 that base offense level is reduced by two points because the
18 defendant has clearly demonstrated acceptance of
19 responsibility under U.S. Sentencing Guideline 3E1.1(a). So,
20 that is a net offense level of 4.

21 Probation calculates a criminal history score of
22 zero based on the lack of past or pending convictions or
23 sentences, and that puts the defendant in Criminal History
24 Category I.

25 So putting that all together, a total offense level

Proceedings - Via Videoconference

19

1 of 4, and Criminal History Category of I, resulted in advisory
2 guidelines imprisonment range of zero to six months, and that
3 is in Zone A of the Sentencing Table.

4 Mr. McDonald, does the Government agree with that
5 calculation?

6 MR. McDONALD: We do, Your Honor.

7 THE COURT: Mr. LaRusso, does the defense agree as
8 well?

9 MR. LaRUSSO: Yes, Your Honor.

10 THE COURT: Okay.

11 So whereas here, the applicable guideline range is
12 in Zone A of the Sentencing Table, a sentence of imprisonment
13 is not required unless the applicable guideline specifically
14 requires it, which in this case it does not. A special
15 assessment of a hundred-dollars will be mandatory. The
16 guidelines fine range for this case is 500 to \$9,500 under
17 Sentencing Guidelines 5E1.2(c)(3). And I notified the parties
18 on Friday afternoon, for reasons that I will talk about a
19 little bit later on in this proceeding, that I was
20 contemplating a fine slightly above that range, namely
21 \$10,000.

22 Mr. LaRusso, I am not asking at this point for your
23 official position on that potential fine, but I just want to
24 make sure that you saw that notification on the docket as
25 well.

Proceedings - Via Videoconference

20

1 MR. LaRUSSO: I did, Your Honor, and I shared it
2 with my client.

3 THE COURT: Okay.

4 And I note that the parties have stipulated that
5 restitution should be in the amount of \$3,953.76. Victim
6 information, again, for that restitution is contained in the
7 Government's May 29th letter filing.

8 Any other objections from either the Government or
9 the defense as to any aspect of that guidelines calculation
10 that I have set forth, including the fine range?

11 Mr. McDonald.

12 MR. McDONALD: No, Your Honor, I have no objection.

13 THE COURT: Mr. LaRusso --

14 MR. LaRUSSO: No, Your Honor.

15 THE COURT: -- any objections? Okay.

16 All right, so the defendant, as I noted, set out
17 various potential differences with some factual recitations in
18 the pre-sentence report. And I don't understand, based on our
19 discussion so far, I don't understand these to be formal
20 objections to the PSR, but I just want to list for the record
21 the parts of the PSR to which I understand Mr. LaRusso to have
22 raised issues about.

23 First, with whether Mr. Cotogno expected to be paid
24 over \$20,000 for his use of the warehouse, that's PSR
25 paragraph 11; whether Mr. Cotogno expected to share in the

1 unlawful proceeds of the fraud, PSR also paragraph 11; whether
2 Mr. Cotogno actively made suggestions to the co-conspirators
3 about what filler materials to use in the scrap metal fraud,
4 that's PSR paragraph 5; the nature of the relationship between
5 Mr. Cotogno and the conspirators in the fraud case, that's PSR
6 paragraph 5; a number of proposed potential changes regarding
7 the PSR's recitation of Mr. Cotogno's financial, especially
8 ways in which his financial situation has changed since
9 December of 2019; and finally, the PSR says Mr. Cotogno
10 charged his co-conspirators at above-market rate for the use
11 of the warehouse knowing about the scrap metal fraud, that is
12 in PSR paragraph 5 as well.

13 I can say with no hesitation that none of the
14 disputes that I have just listed will affect sentence with,
15 perhaps, the one potential exception that it did seem
16 important to me whether Mr. Cotogno was, in fact, charging an
17 above-market rate for his use of the warehouse knowing about
18 the scrap metal fraud.

19 It was unclear to me, Mr. LaRusso, that that's
20 mentioned in your recitation of the places where there may be
21 difference between yourselves and the Probation Department,
22 but I didn't see facts that would specifically contradict
23 that.

24 So, is it important for you that the PSR be modified
25 to strike the reference to the market rate for the use of the

1 warehouse?

2 MR. LaRUSSO: Your Honor, it is not important that
3 it be modified. I don't believe that we have to actually take
4 testimony on it, unless the Court feels it's necessary, in
5 terms of the ultimate sentence the Court wants to impose.

6 What I attempted to do in my submission was to
7 explain my client's pricing to the individual who first came
8 to him and negotiated for the rental space. And what he did
9 is, and I laid it out on page 5, I believe, of my sentencing
10 submissions, a cost for the pallets that were going to be
11 stored in the warehouse and an hourly rate for the use of the
12 forklift in the employee's warehouse. Mr. Cotogno felt at the
13 time that he negotiated that, that that was a fair market
14 rate, a rate that he had charged other customers.

15 Mr. Cotogno can speak, Your Honor, probably more
16 professionally to this issue, and I have no objection to him
17 addressing the Court if the Court feels it's important enough
18 to hear from him, that in the end his rate that he negotiated
19 with one of the co-conspirators, in particular, did not take
20 into account that the pallets that they were bringing into the
21 warehouse were stackable. He thought that they were
22 stackable, so he actually gave them a lesser price than what
23 he would have if he had learned that they were not stackable
24 pallets.

25 So, my effort in my sentence submission, Judge, was

1 not to dispute what the Probation Department said. It might
2 be the Government's position in terms of their review, but in
3 terms of what my client told me and what he knew at the time,
4 the contract was negotiated, those were the terms, and they
5 were not above-market rates taking advantage. That's the
6 inference, Judge, taking advantage of the fact that he was
7 aware that there was unlawful activity about to take place.
8 That, I -- I believe, the essence of the reasons for this
9 presentation to let the Court know that that's not the
10 inference that you can draw from the facts.

11 Though, my client does later on come to -- become
12 aware of what was going on when filler material was putting
13 into the containers and allowed it to continue. That -- that,
14 I believe, the Government set out in their sentencing
15 submission, and we have acknowledged that that is true. But
16 our presentation in regards to the above-market price was to
17 indicate to the Court that my client was not aware from the
18 inception that this was a fraud going on at the time he
19 negotiated the contract.

20 Mr. Cotogno, is there anything --

21 THE COURT: Yes, I think even before we get to
22 Mr. Cotogno, I think we do have agreement between the parties
23 that by the time he is approached by the Commerce Department
24 agents, Mr. Cotogno is aware of the scrap metal filler fraud
25 that is being conducted by the people who are renting space in

1 his warehouse, but I do want to ask from the Government what
2 the basis is to conclude that he was charging an above-market
3 rent and that he was doing so specifically based on the
4 knowledge at the time that the rent was negotiated that the
5 fraud was contemplated?

6 MR. McDONALD: Your Honor, the basis, if we had a
7 hearing, would be the expected testimony of one of the
8 participants in the fraud who -- and I don't necessarily think
9 it's totally inconsistent with what Mr. LaRusso is saying, but
10 based on that participant's understanding, they were being
11 charged an above-market rate for the pallets that were being
12 stored there.

13 Mr. LaRusso here has, obviously, gone into a number
14 of details about warehousing and pallets -- palleting that,
15 perhaps, that co-conspirator would have been unaware of in
16 terms of what rates would apply, but as that co-conspirator,
17 who we would expect to testify, would testify, and this is a
18 co-conspirator to the scrap metal fraud I should say, that
19 that co-conspirator's understanding was that it was an
20 above-market rate.

21 It's not something where we have invoices from
22 Mr. Cotogno's warehouse that clearly show a rate for scrap
23 metal in X circumstances and a higher rate here in Y
24 circumstances. It's entirely a testimonial issue, and for a
25 number of reasons we -- to the extent that it is of

1 significant importance to the Court, we don't seek any
2 evidentiary hearing to establish that.

3 I think Mr. LaRusso's explanation though, as I said,
4 puts out a fair inference that someone who is not in the
5 warehousing industry may not have understood, as Mr. Cotogno
6 understood, the different rates for different pallets.

7 What is clear, though, is that during the course of
8 the conspiracy, whether it's at the time of the pricing or as
9 Mr. LaRusso just indicated, when Mr. Cotogno sees the activity
10 within the warehouse, during the time that the fraud is
11 ongoing, Mr. Cotogno undoubtedly becomes aware of what's going
12 on in his warehouse. I think under any circumstance, any
13 normal circumstance, his obligation at that point, again,
14 regardless of pricing, probably should have been to terminate
15 the contract and shut them down.

16 I know we can address that, but I think that fact,
17 in and of itself, substitutes any probative -- substitutes the
18 probative value for the pricing issue.

19 So, again, I am not seeking an evidentiary hearing
20 to establish the pricing issue separately.

21 MR. LaRUSSO: Your Honor, if I could just reply
22 briefly.

23 I don't know if the Court had a chance to see my
24 client when he was shaking his head yes to the comments --

25 THE COURT: I did see that.

1 MR. LaRUSSO: -- made by Mr. McDonald. And I think
2 that's the telling point here, I hope, is that my client
3 acknowledges that during the course of the conspiracy he
4 became aware, as we say, through his employees that there was
5 a fraud going on, that filler material was being placed in the
6 containers and that he, after learning that, did not do
7 anything to stop it.

8 As a matter of fact, there were three occasions when
9 filler material was actually being used and my client became
10 aware of all three. The first one was cement blocks, the
11 parking lot cement blocks. After he was made aware of it, he
12 actually negotiates a price with one of the co-conspirators to
13 pay for the use of the blocks. And later there was some
14 paving stones belonging to another customer that was used. He
15 gets -- becomes aware of that and he advises the
16 co-conspirators to pay the customer for it, but with knowledge
17 that what they were doing continued. And the third one was a
18 cement truck actually pulled in without his knowledge, cement
19 bags were being filled and put into the containers. And that
20 third one, Your Honor, I think occurred sometime in late
21 November and December.

22 So, the Government's position, and our position, is
23 factually my client did become aware of it as the conspiracy
24 was ongoing at the warehouse and did nothing to stop it.

25 That's the backdrop, Judge, to the false statement

1 that he makes to the agents sometime in early February of the
2 following year.

3 I hope that clarifies for the Court. It's not the
4 dispute as much as a clarification of what actually happened.

5 THE COURT: Okay. That has all been very helpful to
6 me. I did see Mr. Cotogno nodding along as the Government,
7 when Mr. McDonald was talking about the fact that he does come
8 into knowledge later about the fraud that's transpiring in his
9 warehouse, and I do conclude that we have agreement between
10 the parties that Mr. Cotogno is on notice of the fraud at some
11 point in advance of the occurrence of the 1001 violation.

12 As to, therefore, all of the issues that I listed
13 that Mr. LaRusso raised in his letter, I find that a ruling on
14 those disputed facts is unnecessary because the matters will
15 not affect sentencing and the Court will not consider those
16 disputed facts in sentencing.

17 All right, so as I mentioned earlier I reviewed
18 these written sentencing submissions in detail. I will turn
19 now to Mr. LaRusso to ask if you want to be heard on
20 Mr. Cotogno's behalf.

21 MR. LaRUSSO: If I could, Your Honor. And I am
22 going to use the word briefly, and I hope I am accurately
23 describing my upcoming remarks. Some years ago I was told
24 sometimes if you say too much you could hurt your client, and
25 I hope that I don't do that at this point in time.

1 Your Honor, as you indicated, you carefully reviewed
2 all of the submissions and, therefore, I will not repeat them,
3 but I would just like to highlight my client's remorse. He's
4 lived, up until this episode, an exemplary life. He served in
5 the military and his record actually speaks for itself. I, at
6 first, when he described his military service, he understated
7 it. And it only came about actually recently that I learned
8 that his lacerated finger was actually a severed finger and
9 that it had to be reattached. Gangrene developed, and for the
10 next many months, probably over a year, had rehabilitation,
11 both I believe in Vietnam and Japan, and then ultimately in
12 St. Albans.

13 I took the opportunity in my submission to let the
14 Court know that his service was not just, you know, the
15 two-year normal service. He did serve this country, I
16 believe, with distinction and it is an important
17 consideration. So, I took a little bit more effort to
18 describe it to the Court than I would normally in most cases.

19 Your Honor, the other aspect of this is that, you
20 know, since his service in the military, Mr. Cotogno has
21 suffered a number of illnesses, probably more than one man
22 should have to actually endure. And part of the -- part of
23 the problem for me initially was getting him to describe it
24 thoroughly enough for me to understand what he has had to go
25 through over the many years, and they're outlined in the

1 letter.

2 Your Honor, he developed prostate cancer from the
3 foliage and Agent Orange that was used by our military during
4 the Vietnam War. The back injury, Judge, has probably been as
5 serious an injury and an ailment that he's had to contend
6 with. As he sits there right now, Judge, I know that it is
7 not only discomfort that he's suffering, but he's also in
8 pain. He can't sit for long periods of time. He can't stand
9 for long periods of time. He can't walk for long periods of
10 time. And last night it culminated with him expressing
11 frustration to me that he appreciated the Court's accepting
12 our application to go forward with sentencing under these
13 unusual circumstances, but he truly wishes to move forward
14 with his life, accepting the fact that what he had done was
15 wrong.

16 Judge, again, between the character that's described
17 in the letters of his children, his devotion to his family,
18 he's an amazing individual who speaks little about his past.
19 I had to drag it out of him, to be quite honest with you. And
20 I find that to be a normal trait for many of our military
21 servicemen. They do understate much of what they had gone
22 through, and I believe he's -- he is one of those individuals.

23 That being said, Your Honor, he knows what he has
24 done was wrong. There is no doubt about it. He's reflected
25 upon it. You know, even the fact that after he had lied to

1 the agents in February of 2016, even though he called them two
2 months later and initiated a contact, re-contacted with them,
3 told them that he had had enough with the situation and wanted
4 to tell them what had happened, two months had actually
5 continued to pass before he actually made that decision, but
6 he did make it. And maybe the motivation behind it was, you
7 know, his feeling that he might have been -- well, on monies
8 that had been withheld from him, but the bottom line is,
9 Judge, he did initiate it.

10 And I know he stands before you, Your Honor,
11 remorseful for what he had done and he just wants to go back
12 to doing the things that he had been doing; that is, to take
13 care of his health and to take care of his family.

14 I think under the circumstances, Judge, we are going
15 to recommend a non-custodial sentence and ask the Court to
16 impose that on Mr. Cotogno at this point in time.

17 Thank you.

18 THE COURT: Yes. And when you say in your
19 submission that you are seeking a time-served sentence, should
20 I understand that to speak to the question of whether
21 probation is imposed or solely to the question of determining
22 cooperation?

23 MR. LaRUSSO: Yes, I think I should clarify that,
24 Judge.

25 When I asked for time served, I knew that a term of

1 supervised release would probably be imposed. And my
2 recommendation to the Court would be that since he's been on
3 Pretrial Service supervision for almost three years without
4 any problems, I think he's got an exemplary record, Pretrial
5 Services usually notifies the Probation Department. I don't
6 know if they've done it in this case, that a year's period of
7 supervision, which would be -- supervised release following
8 time served would be appropriate. That would be my
9 recommendation, Judge.

10 I know the Government, and I really truly appreciate
11 the Government's position, they don't normally take that
12 position, Judge. They usually recommend a sentence within the
13 guidelines, and in this particular case the fairness of the
14 Government is apparent in their presentation to the Court.
15 But I would ask the Court, maybe considering the unusual
16 circumstances that Mr. Cotogno faces with his medical
17 conditions that you would consider, yes, he's been under
18 supervision, he's had no problems for approximately three
19 years, and that a year's supervision should be sufficient in
20 this particular case. That would be my recommendation, Your
21 Honor.

22 THE COURT: Okay.

23 Mr. McDonald.

24 MR. McDONALD: Thank you, Your Honor.

25 The fraud that occurred here was brazen, and I think

1 Your Honor has gotten a little bit of a taste of the fraud
2 from the submissions and from the pre-sentence report. And
3 it's only relevant here because it goes to the magnitude of
4 the false statements that Mr. Cotogno gave. To watch
5 individuals filling shipping containers with cement or road
6 barriers from the defendant's own parking lot to -- is to be
7 clearly committing a crime in front of someone. And then to
8 be relatively quick -- soon thereafter called upon to provide
9 accurate information upon that crime, which -- which happened
10 here. I mean it was a matter of weeks after the conspirators
11 closed up shop at the warehouse and the Department of Commerce
12 agents and Homeland Security came to the defendant's warehouse
13 and asked what happened. And these are -- these are very good
14 agents. They were moving quickly. And information that was
15 accurate at the time, undoubtedly, would have helped their
16 investigation.

17 And I think it's fair to say that when they went
18 into the defendant's warehouse, they had every reason to
19 expect that they would receive fully accurate information.
20 And when you look at what Mr. LaRusso has laid out about
21 Mr. Cotogno's past, everything about Mr. Cotogno's past
22 suggests that he should have been a person who would have
23 provided that information; between the military service, the
24 absence of any criminal convictions, the clearly successful
25 business he ran for almost 50 years on Staten Island. There

1 was absolutely no good reason, no viable justifiable reason,
2 in my view, that he would lie to the face of two federal
3 agents who were asking very reasonable, fair questions, not
4 about him, about things that were happening in his business.

5 And when you consider what he had observed in the
6 warehouse, his ability to then provide the false name one of
7 the cover names that the conspirators were using, his ability
8 to mislead with a fake e-mail address, to provide false
9 contact information, really to throw the agents off of the
10 scent of these conspirators is highly troubling.

11 And so, when we ask for probation here, we're asking
12 because time served and simple a year or two of supervised
13 release, that doesn't necessarily address really the
14 significance of this offense. No one can foresee when they
15 may be called upon to be a witness to something, to provide
16 accurate testimony. Mr. Cotogno, despite his health, despite
17 his age, he may, in the course of the next couple of years, be
18 called upon to be a witness to some event in Florida or
19 wherever he is and what I want to make sure, what I think is
20 paramount here, is that Mr. Cotogno keep up front in his mind
21 that he has to be 100 percent truthful at all times when he's
22 called upon to be truthful. And that didn't happen here and
23 it should have happened.

24 That said, as we've laid out, he has had a career
25 and a background that, quite frankly, was very different than

1 all of the other individuals who have been prosecuted in this
2 case. He was significantly older than all of the other
3 individuals who were participating in this, most of them were
4 in their twenties and thirties. I understand that, you know,
5 that kind of age difference between people who you're
6 observing and where you're sitting as a warehouse owner could
7 have a significant effect in one's willingness to confront,
8 you know, younger people who you don't know their background.
9 He did serve very admirably with Vietnam.

10 I have spoken with Mr. Cotogno and Mr. LaRusso, and
11 I won't get into the details of those conversations, but I can
12 say that I think it is fair to say that this was a significant
13 blip on Mr. Cotogno's path, but not one that is characteristic
14 of his overall -- his overall character.

15 And so, when we recommended probation here, I think
16 it was a fair balancing of a significant choice, a significant
17 error that Mr. Cotogno knowingly, fully, willfully made, but
18 balanced against a life and a career on Staten Island that
19 showed a different trend and showed a willingness to be part
20 of the community, to support people in his family, especially
21 his daughter who I know has had a significant number of health
22 issues. And so, our recommendation of probation, we think, is
23 a fair balancing and it's one that, I think, for two years
24 Mr. Cotogno can have fully in his mind that he needs to
25 continue following the law, that he needs to continue abiding

1 by the terms of the Court, and that will be a close to five
2 years of following, you know, top Court-imposed rules. I
3 think that that's a fair way to address a very significant
4 series of lies that he chose to give on February 9th of 2016.
5 So, that's the basis of the Government's recommended sentence.

6 We do think a fine is appropriate in view of the
7 defendant's financial resources. And we, of course, have
8 addressed the restitution question. We do not believe that
9 any of the victims of the scrap metal fraud are direct victims
10 of this false statement. They had paid the funds and finances
11 towards the conspiracy prior to Mr. Cotogno giving his
12 statements to the agents. So, we don't believe any of the
13 losses are directly traceable to those statements.
14 Nevertheless, when Mr. Cotogno identified, through his lawyer,
15 that some of the scrap metal still remained at the warehouse,
16 we endeavored to find a way to forfeit that scrap metal. That
17 was not successful.

18 Mr. Cotogno then worked through his lawyer -- and
19 this went on, I should say, for a number of weeks -- went on
20 to try to arrange a sale of that scrap metal in order to
21 generate proceeds. They were eventually able to find a buyer
22 for the scrap metal, and then Mr. Cotogno and his lawyer
23 agreed that that money would be applied to the restitution of
24 the Luthmann crime victims.

25

1 So, I think it was a circumstance that demonstrated,
2 I think to the Government, that Mr. Cotogno was willing to
3 take steps to right the ship and he had able counsel,
4 Mr. LaRusso, to help him do that, but it was not an easy
5 process to arrange that sale. I can say from my own
6 experience in e-mails with Mr. LaRusso about it, that went on
7 for a significant period of time. And I think even though
8 there is only 4,000, approximately, in funds that were raised,
9 it's 4,000 more than the victims of the Luthmann fraud would
10 otherwise be receiving, and so we'd ask the Court impose the
11 agreed amount of restitution to the victims of the Luthmann
12 fraud as well.

13 THE COURT: Okay.

14 Thank you, Mr. McDonald.

15 Mr. Cotogno, do you want to be heard before I impose
16 sentence?

17 THE DEFENDANT: I'd like to say I'm truly, truly
18 sorry for this horrendous part of my life. And I just want to
19 get on with my life when I get healthy and move on. And I
20 want to thank the Courts for their time.

21 THE COURT: Okay, thank you, Mr. Cotogno.

22 All right, so, before I impose sentence I do want to
23 just clarify that as to the PSR I adopt the undisputed facts
24 in the PSR. And to the extent there are outstanding disputes,
25 I find that those potentially disputed facts will not affect

1 sentence.

2 In terms of departures, there are no motions for a
3 departure upwards or downwards from the Guidelines, and so I
4 turn to the Section 3553(a) factors in this case.

5 Now, Mr. Cotogno, you may know already, that statute
6 requires me to impose a sentence that will reflect the
7 seriousness of the crime; promote respect for the law; provide
8 just punishment for the offense; and, among other things,
9 deter criminal conduct by the defendant, yourself, and also
10 potentially deter criminal conduct by others who may seek to
11 engage in this type of crime in the future.

12 And I have also considered the nature and
13 circumstances of the offense and the history and
14 characteristics of Mr. Cotogno in this case.

15 I will talk about what I see as potentially some of
16 the aggravating factors in this case, meaning the factors that
17 militate in furtherance of a more serious sentence, and then
18 turn to what I see as the mitigating factors, which are the
19 factors that argue in favor of a lower sentence.

20 In terms of aggravating factors, this is, as
21 Mr. McDonald discussed, I would say a 1001 conviction that
22 falls at the more serious end of the spectrum of 1001
23 convictions. These lies were directed to the very core of the
24 investigation here. This was a fraud, if I understand it
25 correctly, that was destined to be discovered by the victims

1 immediately upon delivery of the goods that made up the basis
2 of the fraud and that fraud could only work, therefore, if the
3 victims were to have difficulty identifying the perpetrators
4 or were to be unable in their entirety to identify the
5 perpetrators. And the defendant by his actions tended to
6 facilitate the success of the fraud. I know it wasn't
7 ultimately successful, but tended to facilitate the adjacent
8 fraud here by putting the agents onto a false name and
9 description. The misstatements in this case, the lie, goes
10 beyond simply saying "I don't know" when asked "Do you know
11 who the perpetrators are," but providing affirmatively false
12 information of that.

13 I do not proceed from the presumption that
14 Mr. Cotogno was a co-conspirator in the fraud, itself. I
15 don't think it is necessary for me to reach that question and
16 I do not reach that question, but for reasons we have
17 discussed on the record here today, he did, as I mentioned,
18 take some actions that tended to further the fraud, like
19 allowing the use of forklifts in his warehouse, like charging
20 for concrete that was used as filler, et cetera.

21 I also, in determining what I think may be the
22 appropriate in this case, take note of the defendant's
23 relatively significant net worth, even excluding the real
24 estate that he has transferred now to his children.

25 In terms of mitigating factors, I start with

1 Mr. Cotogno's military service. Serving one's country in a
2 time of war may be the highest form of public service that
3 exists in this country and it is, therefore, very much
4 incumbent on me, I think, to recognize those sacrifices at
5 this time. The fact that he continues to this day to suffer
6 certain injuries that are a function of his service to the
7 country in Vietnam, so to me that is extremely important to
8 recognize. And the sentence should reflect all of the history
9 and characteristics of the defendant, but his military
10 service, perhaps, in particular.

11 I do think it is noteworthy that the defendant
12 corrected the false statement on his own initiative. I
13 understand there are some questions about his motives in
14 making that correction, but in the constellation of 1001
15 convictions we must look more favorably on defendants who go
16 back to the agents and correct the misstatements voluntarily,
17 whatever their motives may be, than we do on defendants whose
18 lies have to be uncovered exclusively through the additional
19 efforts of law enforcement.

20 I note that Mr. Cotogno is, by all accounts, a good
21 father and grandfather, that he's provided exceptional support
22 for his children, especially his daughter in Georgia in light
23 of the some of the health issues that she been dealing with.
24 He's been an upstanding and hard-working member of the
25 community and led an otherwise entirely law-abiding life,

1 notwithstanding, I guess, the PSR's very brief reference to a
2 youthful joyriding indiscretion in a stolen car.

3 I do note Mr. Cotogno's medical conditions and that,
4 therefore, a term of incarceration might have a greater impact
5 on him than it would on a defendant who was otherwise in
6 perfect health, and that that could be especially true today
7 given the current circumstances we are living through with
8 respect to COVID-19 and the associated pandemic.

9 So, just to sum up, Mr. Cotogno, I see in you
10 somebody who has been throughout his life a hard-working and
11 law-abiding citizen, who is by all accounts a good father and
12 grandfather and upstanding member of the community, somebody
13 who served his country in the military and pursued a
14 productive career. And the many letters that I received in
15 support of you attest to all those factors.

16 I do not believe, as neither of the parties have
17 requested, that a sentence of incarceration is necessary here
18 to promote the factors under 3553(a). When considering the
19 defendant's history and characteristics, I do not think a
20 custodial sentence is necessary to afford adequate deterrence
21 to criminal conduct here and to promote respect for the law.
22 The defendant will walk away from this with a federal felony
23 conviction. He will suffer other collateral consequences of
24 that conviction, and he will be subject to restitution and a
25 fine, which we will discuss in a few moments.

1 So, I do not impose any term of incarceration. I do
2 impose restitution in the amount of \$3,953.76, pursuant to the
3 stipulation between the parties.

4 Mr. McDonald, I assume that is to be allocated among
5 the victims pro rata based on their losses as set forth in
6 your letter of May 29th?

7 MR. McDONALD: I believe that's correct, Your Honor.
8 The apportionment, I believe, is by the amount of the loss, so
9 that it's calculated by Probation.

10 THE COURT: Okay.

11 I am going to impose a fine of \$10,000 in this case.
12 I know that that is slightly above the high end of the
13 guidelines range, which is \$9,500. I do that based on, not an
14 upward departure under a guidelines analysis, but rather a
15 variance in the context of the statutory analysis, and I do
16 that based on the following factors:

17 One: The defendant's relatively significant
18 financial resources here. Even excluding the real estate, the
19 defendant does have significant means, but a counterweight to
20 that is he does continue to support his children financially.

21 The fine has to reflect, by statute, the gain or
22 loss from the offense, and the offense here resulted, I
23 believe the defendant agrees, in an estimated gain to the
24 defendant of approximately \$10,000 in rent payments. By
25 statute, the fine is also one that needs to take into account

1 the cost of probation. I do intend to impose, for reasons I
2 will get into in a moment, a one-year term of probation, and
3 the pre-sentence report indicates that the cost, the
4 approximate cost of that one year of supervision is
5 approximately \$4,500.

6 So, when you add up the \$10,000 in approximate gains
7 to the defendant, the \$4500 in approximately costs to the
8 Government of supervision, you get to \$14,500. The \$9500 top
9 end of the Guidelines, plus the \$3900 in restitution, would
10 come in too far below that 14,500-dollar total and, therefore,
11 I am imposing the fine of \$10,000. We are still a little bit
12 below that 14,500-dollar total, even when you take into
13 account the agreed-upon restitution, but I think it is
14 acceptable to be a little bit below that in light of the fact
15 that the agreed-upon gain to the defendant from the rent in
16 this case was approximately \$10,000 instead of exactly
17 \$10,000.

18 So, as I note, this is an amount that I come to
19 under the rubric of the variance, and I think it is supported
20 by several factors here which are, one, the size of the losses
21 to the victims; the size of the gain to the defendant; two,
22 the defendant's rather significant financial means; three, the
23 defendant's knowing provision of some support for the fraud,
24 which is undisputed.

25 Turning to probation, the Government has asked, I

1 note, for two years of probation, but I conclude that a
2 one-year term of probation is sufficient here. I do think the
3 risks of recidivism by this specific defendant are relatively
4 low, especially given his recent retirement and sale of his
5 business. I think a year of probation will send a message
6 that this kind of conduct does not go unpunished, and the one
7 year of probation will also have the added benefit of enabling
8 the Court to make the payment of restitution and fine a
9 condition of probation.

10 Finally, I impose the 100-dollar special assessment
11 that is required by law and, in total, I find that this
12 sentence is sufficient, but not greater than necessary, to
13 comply with the purpose of sentence under Section 3553(a).

14 Mr. LaRusso, any questions from you about the
15 sentence I have just imposed?

16 MR. LaRUSSO: No, there isn't, Your Honor. I've
17 talked to my client --

18 THE COURT: Mr. McDonald -- sorry.

19 MR. LaRUSSO: My client had some questions, Judge,
20 about the payment. I told him that it would be worked out
21 with the Probation Department once he meets with them. That
22 would be the only question, I think, my client probably had in
23 his mind as you were talking.

24 Thank you, Your Honor.

25 THE COURT: Okay.

Proceedings - Via Videoconference

44

1 Mr. McDonald, any questions from the Government
2 about the sentence I have just imposed?

3 MR. McDONALD: No, Your Honor, no questions. Thank
4 you.

5 THE COURT: Okay.

6 Mr. Cotogno, I notify you now of your right to
7 appeal, as I am required to do.

8 You can appeal your conviction if you believe that
9 your guilty plea was somehow unlawful or involuntary or if
10 there is some other fundamental defect in the proceedings that
11 was not waived by your guilty plea.

12 Under certain circumstances a defendant also has the
13 right to appeal the sentence. In this case, the plea
14 agreement has waived your right to appeal a sentence of
15 incarceration that is under six months.

16 Any notice of appeal must be filed within 14 days of
17 the filing of the entry of judgment in this case or within 14
18 days of the filing of the Notice of Appeal by the Government.
19 If requested, the clerk will prepare and file a Notice of
20 Appeal on your behalf. If you cannot afford to pay the cost
21 of an appeal or for appellate counsel, you have the right to
22 apply for leave to appeal what is called *in form of pauperis*,
23 which means you can apply to have the Court waive the filing
24 fee, and on appeal you can also apply for court-appointed
25 counsel.

Proceedings - Via Videoconference

45

1 Are there any other matters to resolve in this case,
2 Mr. LaRusso?

3 MR. LaRUSSO: No; thank you, Your Honor.

4 MR. McDONALD: Not for the Government, Your Honor.
5 Thank you.

6 THE COURT: Mr. McDonald.

7 MR. McDONALD: No, Your Honor, no additional
8 matters. Thank you very much.

9 THE DEFENDANT: Thank you, Your Honor.

10 THE COURT: Okay.

11 All right, thanks to everybody for their
12 participation today. Again, under less than ideal
13 circumstances because we are on video, but I understand the
14 defense and the Government's reasons for wanting to move
15 forward expeditiously this way and I think we have done the
16 best we could under the circumstances.

17 Pursuant to 28 U.S. Code Section 753B, I
18 respectfully request that the court reporter produce a
19 transcript of today's proceeding.

20 And with that, we are adjourned. Thank you
21 everybody and stay safe.

22 MR. LaRUSSO: You too, Your Honor, and thank you
23 very much.

24 THE DEFENDANT: Thank you.

25 MR. McDONALD: Thank you, Your Honor.

Proceedings - Via Videoconference

46

1 MS. NGAI: Thank you.

2 THE COURT: Good luck, Mr. Cotogno.

3 (Matter adjourned.)

4 (All parties disconnected.)

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11

12 I certify that the foregoing is a correct transcript from the
13 record of proceedings in the above-entitled matter.

14 /s/ Stacy A. Mace

June 1, 2020

15 _____
STACY A. MACE

DATE

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SAM

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RMR

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